

*In the Matter of Paul Messina, City of Trenton*

CSC Docket No. 2011-3169

**(Civil Service Commission, decided March 7, 2012)**

Paul Messina, a Police Lieutenant with the City of Trenton, represented by Anthony J. Fusco, Jr., Esq., appeals the decision by the City of Trenton to not appoint him from the special reemployment list for Police Captain.

As background, the appellant received a permanent appointment to the title of Police Captain with the appointing authority effective May 18, 2006. In November 2010, the appointing authority conducted a layoff. As a result of this layoff, the appellant was demoted to Police Lieutenant effective November 5, 2010. The appellant was placed on a special reemployment list for Police Captain, and is currently the only eligible on this list.

In the instant matter, the appellant contends that the appointing authority is making improper “acting” appointments within the Police Department. Specifically, the appellant alleges that on January 28, 2011, Police Captain Joseph Juniak was named Acting Police Director. On January 29, 2011, Police Lieutenant Steven Varn was named as an Acting Police Captain to fill Juniak’s captain position. Thereafter, the appellant filed a grievance, contending that he should have been appointed Police Captain as he was the only person on the special reemployment list. Varn remained in the Acting Police Captain position until May 25, 2011. At that time, the appellant received the Acting Police Captain designation. The appellant indicates that he retained this position until September 16, 2011. At that time he was returned to his Police Lieutenant position. Additionally, the appellant states that in mid-October 2011 he was again made Acting Police Captain and that he continues to hold this position. The appellant argues that if there was a need for an acting position for this length of time, then there was a need for a permanent Police Captain position and that he should receive such an appointment with a retroactive date of appointment. In support of his contentions, the appellant submits numerous Police Department memoranda indicating the “acting” positions he references and well as other acting positions throughout the department. The appellant also requests a desk audit be conducted of the Police Department.

A review of official records reveals that the “acting” designations indicated by the appellant or corresponding personnel actions were not entered by the appointing authority into the County and Municipal Personnel System (CAMPS) database as required.

## **CONCLUSION**

*N.J.A.C. 4A:4-1.6(b)1* provides that that when an appointing authority makes an appointment to a specific position in State service or a specific title in local service, an interim appointment shall be made where the position/title is held by a permanent employee who is on a leave of absence. Additionally, *N.J.A.C. 4A:4-1.6(h)* indicates that if a complete eligible list exists for the title, the interim appointment shall be made from that list and an interim appointee's name shall remain on the eligible list for consideration for permanent employment. Further, *N.J.A.C. 4A:4-1.3* states that an unclassified appointment may be made to any title or position allocated to the unclassified service by statute or the Civil Service Commission. The permanent appointment rights of Title 11A, New Jersey Statutes, are not applicable to unclassified appointments.

Initially, the Commission notes that there is no such designation as an "acting" appointment under Civil Service rules. *N.J.S.A. 11A:4-13* and *N.J.A.C. 4A:4-1 et seq.* provide for regular, conditional, provisional, interim, temporary, and emergency appointments. *See In the Matter of Russell Davis* (MSB, decided August 10, 2005); *In the Matter of Michael Shaffery* (MSB, decided September 20, 2006). In the instant matter, the record evidences that Varn and the appellant were appointed to Police Captain positions due to leaves of absence granted to Police Captains accepting unclassified Police Director positions. As such, Varn's and the appellant's appointments are properly considered interim appointments. Further, the appellant is correct in arguing that Varn should not have received an interim appointment as there was a complete special reemployment list available. In this regard, the Commission notes that a special reemployment list is considered complete even if only one name is on the list. The appointing authority corrected its error when it removed Varn from the interim position in May 2011. Since the appellant should have held this interim position instead of Varn, some remedy is warranted. In this regard, the appellant's personnel record should be corrected to reflect his interim appointment to Police Captain from January 29, 2011 to September 16, 2011 and from the date he was again appointed to Police Captain on an interim basis in October 2011. However, since he did not perform the duties of a Police Captain during the period that Varn was the interim Police Captain, the appellant is not entitled to any further remedy, such as back pay.

The appellant also argues that if an interim appointment was made for such a long period, then a permanent appointment must be necessary to fill the position. In this regard, the Commission notes that that nothing in Civil Service law or rules requires that an appointing authority fill a vacant position. *See In the Matter of Institutional Fire Chief* (MSB, decided January 12, 2005). *See also In the Matter of Todd Sparks* (MSB, decided April 6, 2005). Further, the Commission notes that the appellant did not possess a vested right to a permanent appointment since the position in question was, pursuant to this decision, filled on an interim basis pursuant to *N.J.A.C. 4A:4-1.6*. *See In the Matter of Richard Herrick*, Docket No. A-

2590-06T1 (App. Div. July 28, 2008); *In the Matter of Timothy O'Neil*, (CSC, decided February 8, 2012); *In the Matter of Leon Daniels* (CSC, decided December 3, 2008).

Additionally, the appellant requests desk audits for the Police Department. A department-wide desk audit appears unnecessary. However, the appointing authority is ordered to promptly update its personnel records to indicate all interim appointments and leaves of absence for unclassified appointments. Further, the appointing authority is urged to refrain from using the term “acting” when making appointments as this is not a recognized appointment under Civil Service law and rules and leads to confusion among employees.

### **ORDER**

Therefore, it is ordered that this appeal be denied. It is further ordered that the City of Trenton promptly update its Police Department personnel records to indicate all interim appointments and leaves of absence for unclassified appointments.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.